



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190909-0024]

RIN 0648-BI77

Fisheries of the Northeastern United States; Habitat Clam Dredge Exemption Framework

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement the New England Fishery Management Council's Habitat Clam Dredge Exemption Framework Adjustment to its Fishery Management Plans. The proposed action is intended to establish areas within the Great South Channel Habitat Management Area where vessels could fish for Atlantic surfclams or mussels with dredge gear, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Omnibus Habitat Amendment 2. This action is necessary in order for the fishing industry to access part of the surfclam and mussel resource within the Habitat Management Area.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0043, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2019-0043*,
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope: “Comments on the Proposed Rule for Habitat Clam Dredge Exemption Framework.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also accessible via the Internet at *www.nefmc.org*.

Written comments regarding the burden-hour estimates or other aspects of the collection-

of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION:

Background

The Great South Channel Habitat Management Area (GSC HMA) was created by the final rule to implement the New England Fishery Management Council's Omnibus Habitat Amendment 2 (OHA2) (83 FR 15240; April 9, 2018), which prohibited the use of all mobile bottom-tending fishing gear in the GSC HMA. The GSC HMA contains complex benthic habitat that is important for juvenile cod and other fish species, and it is susceptible to the adverse impacts of fishing gear. The OHA2 included a 1-year delay of the GSC HMA closure that allowed the surfclam fishery to continue fishing with hydraulic clam dredges in the GSC HMA. This delay was intended to give the Council time to determine if a long-term exemption is warranted. The 1-year delay ended on April 9, 2019, and the GSC HMA is now closed to all mobile bottom-tending fishing gear.

The Council initiated the Habitat Clam Dredge Exemption Framework Adjustment in 2015 as a following action to OHA2. Development of the framework was guided by a problem statement approved by the Council in October 2015:

The Council intends through this action to identify areas within the Great South Channel and Georges Shoal Habitat Management Areas that are currently fished or contain high energy sand and gravel that could be suitable for a hydraulic clam dredging exemption that balances achieving optimum yield for the surfclam/ocean quahog fishery with the requirement to minimize

adverse fishing effects on habitat to the extent practicable and is consistent with the underlying objectives of [OHA2].

In the final stages of OHA2 development, the Council was also approached by parties interested in developing a mussel dredge fishery in the GSC HMA. Currently there is no Federal mussel fishery management plan.

The Georges Shoal HMA was disapproved by NMFS, and the framework became solely focused on the GSC HMA. Development of the Habitat Clam Dredge Exemption Framework occurred over several meetings of Council's Habitat Plan Development Team, with input from the Council's Habitat Committee and the full Council. While the primary focus of the framework was an exemption for the existing surfclam fishery, most of the alternatives considered could be implemented with or without the exemption applying to the mussel fishery as well. The Council took final action at its December 2018 meeting selecting preferred alternatives and approving the action for submission to NMFS. This rule proposes management measures necessary to implement the Framework.

Proposed Measures

This action would establish three dredge exemption areas (McBlair, Old South, and Fishing Rip) within the GSC HMA where a vessel could potentially fish for surfclams or blue mussels. Tables 1 through 3 contain the coordinates for the proposed exemption areas and are illustrated in Figure 1. Each area would be defined by the following points connected in the order listed by straight lines.

Table 1 -- Coordinates for McBlair Dredge Exemption Area

Point	Longitude	Latitude
1	69° 49.255' W	41° 25.878' N
2	69° 46.951' W	41° 25.878' N
3	69° 46.951' W	41° 19.34' N
4	69° 49.187' W	41° 19.34' N
1	69° 49.255' W	41° 25.878' N

Table 2 -- Coordinates for Old South Dredge Exemption Area

Point	Longitude	Latitude
1	69° 47' W	41° 15' N
2	69° 44' W	41° 15' N
3	69° 44.22' W	41° 10.432' N
4	69° 45' W	41° 7' N
5	69° 47' W	41° 7' N
6	69° 47' W	41° 11' N
7	69° 49.101' W	41° 11' N
8	69° 49.116' W	41° 12.5' N
9	69° 47' W	41° 12.5' N
1	69° 47' W	41° 15' N

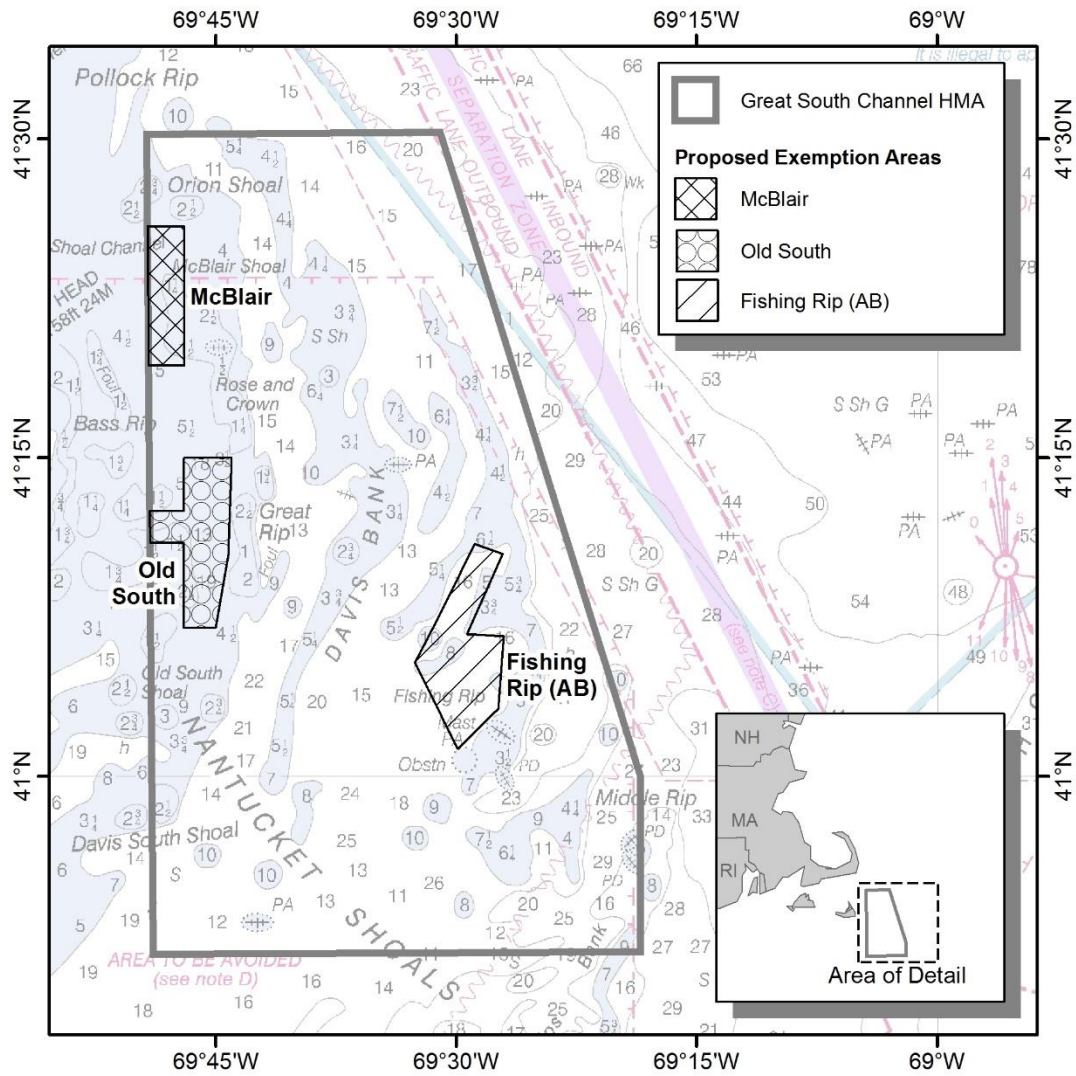
Table 3 -- Coordinates for Fishing Rip Dredge Exemption Area

Point	Longitude	Latitude
1	69° 28.829' W	41° 10.963' N
2	69° 27.106' W	41° 10.485' N
3	69° 29.311' W	41° 6.699' N
4	69° 27.034' W	41° 6.609' N
5	69° 27.376' W	41° 3.198' N
6	69° 29.905' W	41° 1.297' N
7	69° 32.579' W	41° 5.368' N
8	69° 31.193' W	41° 7.356' N
1	69° 28.829' W	41° 10.963' N

These exemption areas were chosen to allow limited access to some historical surfclam fishing grounds while protecting the majority of the HMA. The three exemption areas total only 6.9 percent of the total area of the HMA and do not include the areas most clearly identified as containing complex and vulnerable habitats. Because of the small area being considered for this exemption, this action would not affect the overall conservation benefit of the HMA. The McBlair and Fishing Rip Dredge Exemption Areas would be open to fishing for surfclams or mussels year round. The Old South Dredge Exemption Area would be closed to all mobile bottom-tending gear from November 1 through April 30 and open for surfclam or mussel fishing from May 1 through October 31 each year. The Old South Dredge Exemption Area overlaps

with an area identified in OHA2 as a historical cod spawning area. The annual closure from November through April is meant to avoid times when cod are expected to spawn and to reduce the potential for dredge fishing to disturb spawning aggregations of cod.

Figure 1 -- Map of Proposed Exemption Areas



In addition to the proposed exemption areas of McBlair, Old South, and Fishing Rip, the Council tasked its Habitat Plan Development Team to work with the surfclam industry to develop a prioritized list of research needs concerning two other areas of the HMA (Rose and Crown and Davis Bank East). The intent of the Council was to develop an exempted fishing permit program for these areas that could support the potential development of additional exemptions in the future. Industry members have been working with research organizations on potential exempted fishing permits (EFP) to conduct research in these areas. Requests for EFPs will be evaluated consistent with our normal practice and are separate from this rulemaking.

To facilitate enforcement of the small exemption areas, participating vessels would be required to obtain a letter of authorization (LOA) from the NMFS Regional Administrator. Similar LOAs are used to grant access to specific areas or programs in other fisheries and may be applied for using a common form available from NMFS' Greater Atlantic Regional Fisheries Office (GARFO). If a vessel violates any of the requirements of the exemption areas, the LOA may be canceled, prohibiting future access to the GSC HMA.

To receive the LOA, a vessel must hold a Federal commercial surfclam permit, which comes with requirements including reporting each fishing trip, using a vessel monitoring system (VMS), and selling catch exclusively to a federally permitted dealer. The LOA would require the vessel have a NMFS-approved VMS unit that can automatically adjust the frequency of position information sent to NMFS. A list of qualifying VMS units is available from GARFO. While within the GSC HMA, vessels would be subject to an increased VMS position polling rate from once per hour to once every 5 minutes. This would provide finer scale resolution on the location of the vessel and allow NMFS to monitor compliance with the small exemption areas. The increased polling rate would begin automatically as the vessel approaches the GSC HMA

and would continue until after the vessel leaves the area. Vessels fishing in the GSC HMA would be required to use new VMS trip declaration codes that would allow law enforcement to know they intend to fish in the GSC HMA for surfclams or blue mussels.

Vessels fishing for surfclams within the GSC HMA would still be subject to the requirements of the individual transferable quota system and other provisions of the surfclam regulations. This includes restrictions on retention of other species of fish caught incidentally while using hydraulic clam dredge gear, which are typically determined by the other Federal fishing permits the vessel holds.

To fish for mussels in the GSC HMA, a vessel would be required to hold a surfclam vessel permit. This permit can be obtained from GARFO. By holding a surfclam permit, mussel fishing vessels in the GSC HMA would be subject to permit reporting and monitoring requirements that would not normally apply to vessels fishing for mussels in Federal waters. Mussel fishing vessels would also need to obtain the new LOA and use the VMS trip declaration code for any trip in the GSC HMA. Vessels would be required to use a non-hydraulic mussel dredges (also called a dry dredge), which could not exceed 8 ft (2.4 m) in width. Vessels fishing for mussels could not fish for, harvest, or land any species of fish other than blue mussels. Any violation of permit, reporting, monitoring, or LOA requirements for fishing in the GSC HMA could result in NMFS revoking the vessel's LOA, which would prevent further fishing by that vessel in the HMA.

Pursuant to section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council has deemed that this proposed rule is necessary and appropriate for the purpose of implementing the Habitat Clam Dredge Exemption Framework Adjustment, with the exception of the measure noted below as proposed under the

Secretary's authority under section 305(d) of the Magnuson-Stevens Act. Under the Magnuson-Stevens Act, we are required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The Magnuson-Stevens Act permits us to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. We are seeking comment on the Council's proposed measures in the Habitat Clam Dredge Exemption Framework Adjustment and whether they are consistent with the Council's FMPs and the OHA2, the Magnuson-Stevens Act and its National Standards, and other applicable law.

Clarification

This action also proposes a minor modification to the regulations under authority granted the Secretary under section 305(d) of the Magnuson-Stevens Act to ensure that Fishery Management Plans (FMP) are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action proposes to define a "straight line" with regard to regulated areas, as a rhumb line, unless explicitly stated otherwise. When fishery managers develop regulated areas (*e.g.*, scallop access areas or Northeast multispecies closed areas), the areas are defined by a series of points of latitude and longitude connected by straight lines when drawn on a standard nautical chart. Nautical charts use a Mercator projection so straight lines drawn on a chart are lines of constant compass bearing, also known as rhumb lines. To make the regulations as unambiguous as possible, we propose to add this definition and invite the public to comment on this proposal.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the New England Council's FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. The EA includes an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section and in the preamble to this proposed rule. A summary of the RFA analysis follows. A copy of the detailed RFA analysis is available from the Council (see ADDRESSES).

Description of the Reasons Why Action is Being Considered

This action proposes management measures to allow fishing with dredge gear for Atlantic surfclams or blue mussels in three exemption areas within the Great South Channel HMA. The measures seek to minimize to the extent practicable the adverse effects on complex habitat within the HMA by fishing for surfclams and mussels in the area.

Statement of the Objectives of, and Legal Basis for, this Proposed Rule

This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648. A complete description of the action, why it is being considered, and the legal basis for this action are contained in the Clam Dredge Exemption Framework document, and elsewhere in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

This proposed rule affects small entities engaged in commercial fishing operations in the Federal waters off Southern New England, Georges Bank, and the Gulf of Maine, and permitted to fish for either surfclams or mussels. In 2017, eight large commercial fishing businesses and 377 small commercial fishing businesses held either a surfclam or ocean quahog federal permit. The number of fishermen actively engaged in the surfclam and ocean quahog fishery is much smaller than the number of individuals permitted for those two fisheries. This is because there is an individual transferrable quota associated with both species, meaning only individuals holding or leasing quota can land surfclam and ocean quahog. Over the last 3 years, the number of businesses that have been active in the areas proposed for exemption areas has been between 10 (8 small and 2 large) and 12 (10 small and 2 large).

Between 10 (2015) and 11 (2016, 2017) vessels were permitted and active in the Massachusetts mussel fishery in the most recent 3-year period, although only one or two are expected to fish in the HMA. The current status of the mussel fishery in the Great South Channel is exploratory, and ownership data is not available from which to assess business size for state-permitted vessels. This situation precludes a more thorough investigation into the number and size of mussel businesses regulated under the Clam Dredge Framework.

Small businesses have historically generated a higher percentage of their revenue within the Great South Channel HMA and are expected to benefit more from any exemption than large businesses, relatively speaking.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

This action would require an annual letter of authorization for fishermen accessing the Great South Channel HMA exemption areas and each trip into the exemption areas would require vessels use a new Vessel Monitoring System (VMS) trip declaration code and be subject to additional position polling when inside the HMA.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This action proposes a set of three discrete exemption areas within the GSC HMA where dredge fishing for surfclams and mussels would be allowed. The Council considered three other options. The Council also evaluated taking no action thereby keeping the entire GSC HMA closed to dredge fishing for surfclams and blue mussels. All of the action alternatives would result in some level of increased revenue for vessels fishing in the exemption areas. While this action does not affect the overall quota for surfclams, the catch rate in the exemption areas is potentially higher than in other open areas. Therefore, the opening of these areas may not affect the total harvest of surfclams, but may improve the efficiency with which part of the quota is harvested. Moreover, within the affected entities, some may have had a disproportionate historic harvest from areas now closed to hydraulic dredges in the GSC HMA. In choosing a preferred alternative, the Council considered the tradeoffs between short-term economic benefit to the surfclam and mussel industries and potential long-term benefit to other fisheries through the protection of essential fish habitat from the adverse impacts of fishing gear.

This proposed rule contains an addition to a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648-0202. Public reporting burden for obtaining a letter of authorization to fish within the GSC HMA is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. The public reporting burden for increasing the VMS location data from once per hour to once every five minutes is estimated to cost participating fishermen \$0.84 per hour while a vessel is within 3 nm (5.6 km) of the HMA and subject to the higher position polling rate. Based on historical fishing effort, this would translate to an average annual cost of \$8,639 spread across all vessels active in the HMA.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Greater Atlantic Regional Fisheries Office at the ADDRESSES above, and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 9, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, add, in alphabetical order, a definition for “Straight line.”

§ 648.2 Definitions.

* * * * *

Straight line, with regard to regulated areas, means a rhumb line, unless explicitly stated otherwise.

* * * * *

3. In 648.370, revise paragraph (h)(2) to read as follows:

§ 648.370 Habitat Management Areas.

* * * * *

(h) * * *

(2) *Atlantic Surfclam and Mussel Dredge Exemption Areas.* (i) *Dredge Exemption Area Requirements.* A vessel may fish in one or more of the Dredge Exemption Areas below, provided the area is open and the vessel meets the following requirements:

(A) Holds a federal Atlantic surfclam vessel permit.

(B) Has been issued a Letter of Authorization to fish in the Great South Channel HMA from the Regional Administrator.

(C) Has a NMFS-approved VMS unit capable of automatically transmitting a signal indicating the vessel's accurate position at least once every 5 minutes while in or near the Great South Channel HMA.

(D) Declares each trip into the HMA through the VMS and fishes exclusively inside HMA dredge exemption areas on such trips.

(E) When fishing for surfclams in an HMA exemption area, uses only hydraulic clam dredge gear.

(F) When fishing for mussels in an HMA exemption area, any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not possess, or land any species of fish other than blue mussels.

(ii) *McBlair Dredge Exemption Area.* (A) The McBlair Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

McBlair Dredge Exemption Area

Point	Longitude	Latitude
1	69° 49.255' W	41° 25.878' N
2	69° 46.951' W	41° 25.878' N
3	69° 46.951' W	41° 19.34' N

4	69° 49.187' W	41° 19.34' N
1	69° 49.255' W	41° 25.878' N

(B) The McBlair Dredge Exemption Area is open year-round.

(iii) *Old South Dredge Exemption Area.* (A) The Old South Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

Old South Dredge Exemption Area

Point	Longitude	Latitude
1	69° 47' W	41° 15' N
2	69° 44' W	41° 15' N
3	69° 44.22' W	41° 10.432' N
4	69° 45' W	41° 7' N
5	69° 47' W	41° 7' N
6	69° 47' W	41° 11' N
7	69° 49.101' W	41° 11' N
8	69° 49.116' W	41° 12.5' N
9	69° 47' W	41° 12.5' N
1	69° 47' W	41° 15' N

(B) The Old South Dredge Exemption Area is open from May 1-October 31, and closed to all mobile bottom-tending gear November 1-April 30.

(iv) *Fishing Rip Dredge Exemption Area.* (A) The Fishing Rip Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

Fishing Rip Dredge Exemption Area

Point	Longitude	Latitude
1	69° 28.829' W	41° 10.963' N
2	69° 27.106' W	41° 10.485' N
3	69° 29.311' W	41° 6.699' N
4	69° 27.034' W	41° 6.609' N
5	69° 27.376' W	41° 3.198' N
6	69° 29.905' W	41° 1.297' N
7	69° 32.579' W	41° 5.368' N
8	69° 31.193' W	41° 7.356' N
1	69° 28.829' W	41° 10.963' N

(B) The Fishing Rip Dredge Exemption Area is open year-round.

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[FR Doc. 2019-19815 Filed: 9/16/2019 8:45 am; Publication Date: 9/17/2019]